

**ATTACHMENT A**  
**THE PROPOSED DECISION**

BEFORE THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATE OF CALIFORNIA

In the Matter of the Appeal of  
Beneficiary Allowance Upon the Death of  
David E. Yaple by:

CHRISTINE YAPLE,

Respondent.

Case No. 2015-0171

OAH No. 2015080400

**PROPOSED DECISION**

This matter was heard before Administrative Law Judge Jonathan Lew, Office of Administrative Hearings, on December 15, 2015, in Sacramento, California.

JeanLaurie Ainsworth, Senior Staff Attorney, represented the California Public Employees' Retirement System.

There was no appearance by, or on behalf of respondent Christine Yaple.<sup>1</sup>

Evidence was received, the record was closed and the matter was submitted for decision on December 15, 2015.

**ISSUE**

Did the California Public Employees' Retirement System correctly determine that Christine Yaple was not eligible for an Option 2W lifetime benefit allowance?

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<sup>1</sup> Compliance with the service and notice requirements set forth in Government Code sections 11505 and 11509 was established. This matter proceeded by way of default under Government Code section 11520.

## FACTUAL FINDINGS

1. The Statement of Issues was made and filed on July 28, 2015, by Anthony Suine, Division Chief, Benefit Services Division, California Public Employees' Retirement System (CalPERS). He did so in his official capacity.

2. CalPERS is a "prefunded, defined benefit" retirement plan. (*Oden v. Board of Administration* (1994) 23 Cal.App.4th 194, 198.) The formula for determining a member's retirement benefit takes into account: (1) years of service; (2) a percentage figure based on the age on the date of retirement; and (3) final compensation. (Gov. Code, §§ 20037, 21350 et seq.; *City of Sacramento v. Public Employees Retirement System* (1991) 229 Cal.App.3d 1470, 1479.) Members may elect an optional settlement whereby a beneficiary is designated to receive continued payment of benefits (e.g. monthly allowance) upon the member's death.

3. Government Code section 21462 provides that a member may, provided certain conditions are satisfied, elect to provide for a new lifetime option beneficiary. This is referred to as a recalculation of options. One example when this comes into play is where a named beneficiary predeceases a member. The member may subsequently elect to provide for a new option beneficiary. Because of actuarial considerations, there may be a cost to the member to provide for a new option beneficiary; and the cost is typically reflected as a permanent reduction to the member's monthly retirement allowance to pay for the new option benefit that the member is electing to provide. The recalculation of benefits becomes effective once the member submits the formal election documents to CalPERS, and both the member and the new option beneficiary are alive on the effective date for the recalculation of options.

4. David Yaple (decedent) was employed by the City of Glendale on February 1, 1963, and classified as a local miscellaneous member of CalPERS. Decedent retired for service on August 1, 1992. He elected the Option 2 Allowance and designated his first spouse, Mary Yaple, as beneficiary for the monthly allowance and lump sum Retired Death Benefit. Mary Yaple passed away on May 2, 2005.

5. On January 20, 2006, decedent submitted an Application to Modify Option and/or Life Option Beneficiary to remove Mary Yaple as the beneficiary.

On January 25, 2006, CalPERS mailed a letter to decedent advising him that the removal of his life option beneficiary resulted in an increase to his monthly allowance based on the "pop-up" provision of CalPERS law, and that he would receive an increase of \$115.06 to his monthly allowance, retroactive to June 1, 2005.

6. On April 7, 2006, decedent married Christine Yaple (respondent).

7. On May 7, 2007, decedent contacted CalPERS and requested a beneficiary change form to add respondent as his beneficiary. On that same date, CalPERS mailed decedent an informational booklet (PUB 98) entitled "What You Need to Know About

Changing Your Beneficiary or Monthly Benefit after Retirement.” This booklet contained specific instructions to members on how to complete and submit an application form. It also informed members that they must provide certain documentation that proves a qualifying event occurred, as well as documentation that confirms the new beneficiary’s age. The booklet indicated that a certified marriage certificate was required to document marriage as a qualifying event. Regarding timelines, PUB 98 instructed members as follows:

Within 60 days after CalPERS has received your application and the necessary documentation, we will mail you the Modification of Original Election at Retirement document with your recalculated retirement allowance choices. The election document must be returned to us by the date indicated. If not, CalPERS will cancel your request to change your option.

8. CalPERS maintains a “Customer Touch Point Report” which logs all contacts with its members. The log entries documenting contacts with decedent indicate that CalPERS mailed copies of the PUB 98 booklet to decedent on May 7, 2007, June 25, 2007, November 28, 2007, and on January 21, 2009.

On January 29, 2009, CalPERS analyst Barrett Jensen assisted decedent with completing the application form. On February 13, 2009, decedent completed and executed an Application to Modify Option and/or Life Option Beneficiary, naming respondent as his new beneficiary. This application was received and filed with CalPERS on February 18, 2009.

9. On March 17, 2009, decedent contacted CalPERS regarding the status of his application.

On March 18, 2009, CalPERS mailed a recalculation rejection letter to decedent informing him that his application was not acceptable and could not be processed due to missing marriage and birth certificates. The rejection letter was sent out by CalPERS analyst Maryann Basa, and documented in the Customer Touch Point Report.

10. On August 11, 2013, decedent passed away. Respondent received a lump sum Retired Death Benefit of \$500, and the prorated accumulated contribution of \$966.44 as decedent’s statutory beneficiary.

11. By letter dated February 5, 2014, respondent advised CalPERS that she was in the process of obtaining and sending decedent’s death certificate, their marriage certificate and her birth certificate to CalPERS. She submitted a second letter dated October 31, 2014, to CalPERS. She apologized for delays in submitting documentation, and explained that some documentation had been lost due to her moving to another state. The requested documents were eventually mailed to and received by CalPERS.

12. On December 5, 2014, CalPERS sent respondent a letter advising her that it had denied her request to receive a monthly allowance and continued health benefits as the beneficiary of decedent. CalPERS explained to respondent that the recalculation of options could only become effective if the member submitted the formal election document and both the member and the option beneficiary are alive when the recalculation of options was performed. CalPERS further noted in its letter that it had advised decedent back on March 18, 2009, that it was missing required documentation, that such documentation had not been received by CalPERS, and that there was no record of any further inquiry from decedent regarding a beneficiary/option change request. Respondent was advised of her right to appeal the denial of the request. She formally appealed from CalPERS's decision by letter dated December 29, 2014.

### *Discussion*

13. Respondent appealed CalPERS's decision finding her not eligible for an Option 2W lifetime beneficiary allowance. Presumably, the mistake in this case was decedent's failure, prior to his death, to provide the requested documentation (marriage and birth certificates) along with his February 2009 Application to Modify Option and/or Life Option Beneficiary. Where mistakes are made the CalPERS Board of Administration has discretion to correct the errors or omissions of an active member. In this regard, Government Code section 20160 provides as follows:

(a) Subject to subdivisions (c) and (d), the board may, in its discretion and upon any terms it deems just, correct the errors or omissions of any active or retired member, or any beneficiary of an active or retired member, provided that all of the following facts exist:

(1) The request, claim, or demand to correct the error or omission is made by the party seeking correction within a reasonable time after discovery of the right to make the correction, which in no case shall exceed six months after discovery of this right.

(2) The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.

(3) The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part. Failure by a member or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does

not constitute an "error or omission" correctable under this section.

(b) Subject to subdivisions (c) and (d), the board shall correct all actions taken as a result of errors or omissions of the university, any contracting agency, any state agency or department, or this system.

(c) The duty and power of the board to correct mistakes, as provided in this section, shall terminate upon the expiration of obligations of this system to the party seeking correction of the error or omission, as those obligations are defined by Section 20164.

(d) The party seeking correction of an error or omission pursuant to this section has the burden of presenting documentation or other evidence to the board establishing the right to correction pursuant to subdivisions (a) and (b).

(e) Corrections of errors or omissions pursuant to this section shall be such that the status, rights, and obligations of all parties described in subdivisions (a) and (b) are adjusted to be the same that they would have been if the act that would have been taken, but for the error or omission, was taken at the proper time. However, notwithstanding any of the other provisions of this section, corrections made pursuant to this section shall adjust the status, rights, and obligations of all parties described in subdivisions (a) and (b) as of the time that the correction actually takes place if the board finds any of the following:

(1) That the correction cannot be performed in a retroactive manner.

(2) That even if the correction can be performed in a retroactive manner, the status, rights, and obligations of all of the parties described in subdivisions (a) and (b) cannot be adjusted to be the same that they would have been if the error or omission had not occurred.

(3) That the purposes of this part will not be effectuated if the correction is performed in a retroactive manner.

14. Here, decedent was provided four PUB 98 booklets between May 7, 2007, and January 21, 2009. He was on notice that he was responsible for providing documentation that a qualifying event took place, as well as documentation that confirmed

his new beneficiary's age. He filed an application in February 2009, and was informed in March 2009 that his application was rejected because it was missing both marriage and birth certificates. There is no subsequent record of decedent undertaking any effort to provide this information to CalPERS prior to his passing on August 11, 2013. Respondent eventually provided this documentation to CalPERS in 2014.

The error or omission in this case was not the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure. Decedent received notice of both the rejection of his application and his need to provide additional documentation on or around March 18, 2009, over four years prior to his death. He simply failed to provide the additional documents as requested.

15. Government Code section 20160, subdivision (a)(3) provides that the “[f]ailure by a member or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an ‘error or omission’ correctable under this section.” Decedent made no additional inquiry of CalPERS after March 18, 2009. Respondent acted unreasonably in waiting until after decedent’s passing to make inquiry. A reasonable person in decedent’s or respondent’s position would have made earlier inquiry if they were serious about obtaining the Option 2W lifetime beneficiary allowance. It is further noted that respondent and decedent benefitted from an increased monthly allowance over the period from when CalPERS advised them of the need for additional documentation, and when he passed away in August 2013. CalPERS has estimated that a recalculation would have reduced decedent’s monthly retirement allowance from about \$2,566 to about \$1,351 for the period July 1, 2010, through August 11, 2013. This would have resulted in an overpayment to decedent of \$46,581.13 in this case.

16. Other than documents submitted earlier by respondent to CalPERS and made part of the record in this case, there is no other evidence in support of any error or omission by decedent being the result of mistake, inadvertence, surprise, or excusable neglect. Decedent’s failure to submit the proper documentation in timely fashion, or to inquire regarding the recalculation process after he submitted the application is not a mistake CalPERS can correct under the provisions of Government Code section 20160.

17. For all the above reasons, respondent has not demonstrated that she has a right pursuant to Government Code section 20160 to have CalPERS correct decedent’s error or omission in failing to submit the documentation requested of him by CalPERS on March 18, 2009.

## LEGAL CONCLUSIONS

### *Burden and Standard of Proof*

1. An applicant for retirement benefits has the burden of proving that she is entitled to it. (*Greator v. Board of Administration* (1979) 91 Cal.App.3d 54). Government

Code section 20160, subdivision (d), provides: “The party seeking correction of an error or omission pursuant to this section has the burden of presenting documentation or other evidence to the board establishing the right to correction pursuant to subdivisions (a) and (b).”

2. In the absence of a statute to the contrary, the standard of proof is a preponderance of the evidence. (Evid. Code, § 115.)

### *Applicable Statutes*

3. As set forth in Findings 3 and 13, the applicable statutes relating to an application to modify option and/or life option beneficiary and the CalPERS Board of Administration’s discretion to correct the errors or omissions of an active member, are set forth respectively in Government Code sections 21462 and 20160.<sup>2</sup>

4. Government Code section 20160, subdivision (a)(3) provides: “Failure by a member or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an ‘error or omission’ correctable under this section.”

### *Conclusion*

5. The matters set forth in Findings 7 through 17 have been considered. Respondent failed to meet her burden of establishing that any error made by decedent in failing to provide requested documentation was the result of mistake, inadvertence, surprise or excusable neglect. Decedent and respondent also failed to make the inquiry that would be

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<sup>2</sup> Government Code section 21462, subdivision (a)(1) provides in pertinent part:

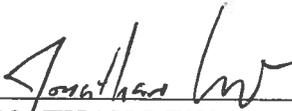
Notwithstanding any other provision of this part, a member who elected to receive optional settlement 2, 3, or 4, involving a life contingency of the beneficiary, may, if the beneficiary predeceases the member or if the member marries and the former spouse was not named as beneficiary, or, if a former spouse was named, in the event of a dissolution or annulment of the marriage or a legal separation in which the judgment dividing the community property awards the total interest in the retirement system to the retired member, elect to have the actuarial equivalent reflecting any selection against the fund resulting from the election as of the date of election of the allowance payable for the remainder of the member’s lifetime under the optional settlement previously chosen applied to a lesser allowance during the member’s remaining lifetime under one of the optional settlements specified in this article and name a different beneficiary.

made by a reasonable person in like or similar circumstances. For these reasons, and based on the Factual Findings and Legal Conclusions as a whole, respondent has not established any right under Government Code section 20160, subdivision (a), to have CalPERS correct any error or omission by decedent to provide the requested documents. Accordingly, respondent is not eligible for an Option 2W lifetime beneficiary allowance.

ORDER

CalPERS correctly determined that respondent is not eligible for an Option 2W lifetime beneficiary allowance. The appeal of respondent Christine Yaple is DENIED.

DATED: December 22, 2015

  
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JONATHAN LEW  
Administrative Law Judge  
Office of Administrative Hearings